Supreme Court, U. S.
FILED
AUG 21 1975
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

****

October Term, 1975

No. 75-145

****

THE NORTHERN CHEYENNE TRIBE,

Petitioner,

-vs-

WILLIAM HOLLOWBREAST, et al.,

Respondents.

****

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI SUBMITTED BY RESPONDENTS WILLIAMSON AND BOWEN

****

MONTANA LEGAL SERVICES
ASSOCIATION
By Neil Haight
Attorneys for Respondents
Williamson and Bowen

Office Address:
601 Power Block
Helena, Montana 59601

STATE PUBLISHING CO. HELENA, MONT.

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES.....ii

STATEMENT OF THE CASE..... 1

ISSUE PRESENTED..... 1

STATEMENT OF FACTS..... 1

REASONS FOR NOT GRANTING JURISDICTION

SUMMARY..... 3

I. The Background Of The Allotment System Clarifies The Nature Of The Rights Involved..... 5

II. Choate v. Trapp Properly Controls The Result Of The Instant Case..... 8

A. Individual Indians Have Constitutional Rights In Individually Owned Trust Allotments According To Choate v. Trapp..... 9

B. Individual Indians Have No Right Or Enforceable Title In TRIBAL Property According To Gritts v. Fisher.....11

C. The Decision In Choate v. Trapp Is Based on Statutory, Not Contractual, Rights.....13

III. The Allottees' Remainder Interest In The Mineral Estate Was Conveyed By The Original Trust Patents.....16

IV. Congress' Authority In Conducting Indians Affairs Does Not Otherwise Permit Divesting Vested Allotment Rights.....19

CONCLUSION.....23

STATE PUBLISHING CO. HELENA, MONT.

TABLE OF AUTHORITIES

CASES: Page(s)

Adams v. Osage Tribe, 59 F.2d 653 (10th Cir. 1932).....18

Agua Caliente Band of Mission Indians v. County of Riverside, 306 F.Supp. 279 (C.D. Calif. 1969)..... 4

Allotment Sections on the Fort Belknap Indian Reservation, 55 I.D. 295 (1935).....17

Arenas v. United States, 322 U.S. 419 (1944)..... 6,7,17

Benson Min. & Smelting Co. v. Alta Min. & Smelting Co., 145 U.S. 428 (1892).....17

Board of County Commissioners v. Seben, 130 F.2d 663 (10th Cir. 1941)..... 4

Board of County Commissioners v. United States, 152 F.2d 540 (10th Cir. 1945)..... 4

Board of Commissioners of Tulsa County, Oklahoma v. United States, 94 F.2d 450 (10th Cir. 1938)..... 4

Brader v. James, 246 U.S. 88 (1918).....15,21

Bryan County, Oklahoma v. United States, 123 F.2d 782 (10th Cir. 1941)..... 4

Carpenter v. Shaw, 280 U.S. 363 (1929)..... 4,15

Chase Jr., v. United States, 256 U.S. 1 (1921).....19

Choate v. Trapp, 224 U.S. 665 (1912)..... 1,3,4, 8,9,10,11,12,13,14, 15,16,17,20,21,23

Choctaw Nation v. United States, 100 F.Supp. 318 (Ct.Cl. 1951)..... 4

County of Mahnomen v. United States, 319 U.S. 474 (1943)..... 4

English v. Richardson, 224 U.S. 680 (1912)..... 4,8,14, 15

Fish v. Wise, 52 F.2d 544 (10th Cir. 1931), cert. denied 282 U.S. 903 (1931)..... 7

Glacier County, Montana v. United States, 99 F.2d 733 (9th Cir. 1938)..... 4

Gleason v. Wood, 224 U.S. 679 (1912)..... 4

Goat v. United States, 224 U.S. 458 (1912).....21,22

Gritts v. Fisher, 224 U.S. 640 (1912)..... 6,9,11, 12,19,20

CASES: (cont.) Page(s)

Heckman v. United States, 224 U.S. 413 (1912)..... 7,21,22

Kirkwood v. Arenas, 243 F.2d 863 (9th Cir. 1957)..... 4

Lane v. Santa Rosa, 249 U.S. 110 (1919).....23

Landman v. Comm'n Internal Revenue Service, 123 F.2d 787 (10th Cir. 1941)..... 4

Lone Wolf v. Hitchcock, 187 U.S. 553 (1903).....16

Lowe v. Fisher, 223 U.S. 95 (1912).....20

McClanahan v. State Tax Commission of Arizona, 411 U.S. 164 (1973).....10

McIntire v. United States, 22 F.Supp. 316 (D. Mont. 1936)..... 4

Morrow v. United States, 243 F. 854 (8th Cir. 1917)..... 4

Mott v. United States, 283 U.S. 747 (1931)..... 4,7,17

Nadeau v. Union Pacific Railroad, 253 U.S. 442 (1920).....19

National Indian Youth Council v. Bruce, 366 F.Supp. 313 (N.D. Utah 1973).....16

Nicodemus v. Washington Water and Power Co., 264 F.2d 614 (9th Cir. 1959).....16

Northern Cheyenne Tribe v. Northern Cheyenne Defendant Class of Allottees, Heirs and Devisees, 505 F.2d 268 (9th Cir. 1974)..... 1,3

Northern Cheyenne Tribe v. William Hollowbreast, 349 F.Supp. 1302 (D. Mont. 1972)..... 1,3,10

Oklahoma Tax Comm'n v. United States, 319 U.S. 598 (1943)..... 4

Payne v. New Mexico, 255 U.S. 367 (1921)..... 7

Raymond Bear Hill, 52 I.D. 688 (1929)..... 7,17,18

Rights of Indians to Allotments in San Juan County, Utah, 57 I.D. 547 (1942)..... 7,17

St. Marie v. United States, 108 F.2d 876 (9th Cir. 1940) Cert. denied 311 U.S. 652 (1940)..... 7

Sizemore v. Brady, 235 U.S. 441 (1914)..... 4,19

Stephens v. Cherokee Nation, 174 U.S. 445 (1899).....20

Sweet v. Schock, 245 U.S. 192 (1917).....22

Taunah v. Jones, 90 F.Supp. 459 (W.D. Okla. 1950)..... 4

Thomas v. Gay, 169 U.S. 214 (1898).....16

CASES: Page(s)

Tiger v. Western Investment Co., 221 U.S. 286 (1911)....15,21,22

United States v. Arenas, 158 F.2d 730 (9th Cir. 1946) Cert. denied 331 U.S. 842 (1947)..... 7

United States v. Bartlett, 235 U.S. 72 (1914).....22

United States v. Benewah County, Idaho, 290 F. 268 (9th Cir. 1923)..... 4

United States v. Chase, 245 U.S. 89 (1917).....20

United States v. Ferry County, Washington, 39 F.Supp. 1007 (E.D. Wash. 1941)..... 4

United States v. Ferry County, Washington, 24 F.Supp. 399 (E.D. Wash. 1938)..... 4

United States v. Jackson, 280 U.S. 183 (1930).....15,21

United States v. Jim, 409 U.S. 80, reh.den. 409 U.S. 1118 (1972)..... 6,19

United States v. Nez Perce County, 95 F.2d 232 (9th Cir. 1938)..... 4

United States v. Powers, 16 F.Supp. 155 (D. Mont. 1936)..... 4

United States v. Rowell, 243 U.S. 464 (1917).....19

United States v. Spaeth, 24 F.Supp. 465 (D. Minn. 1938)..... 4

United States v. 2,005.32 Acres of Land, etc., 160 F.Supp. 193 (N.D.So.Dak. 1958).....16

United States v. White, 508 F.2d 453 (8th Cir. 1974).....16

Wallace v. Adams, 204 U.S. 415 (1907).....20

Ward v. Love County, 253 U.S. 17 (1919)..... 4,14,15

Williams v. Johnson, 239 U.S. 414 (1915)..... 4,22

Williams v. Lee, 358 U.S. 217 (1959).....10

Worcester v. Georgia, 6 Pet. 515 (1832).....10

Wyoming v. United States, 255 U.S. 489 (1921).....17

CONSTITUTION:

U.S. Const. Art. 1 Sec. 10.....13

U.S. Const. Amend. V..... 1,9,13, 14

STATUTES: Page(s)

Act of Feb. 8, 1887, 24 Stat. 388..... 6,7,8

Act of June 28, 1906, 34 Stat. 539.....18

Act of May 29, 1908, 35 Stat. 460.....18

Act of June 30, 1919, 41 Stat. 17.....18

Act of June 4, 1920, 41 Stat. 751.....18

Act of March 3, 1921, 41 Stat. 1355.....18

Act of June 3, 1926, 44 Stat. 690..... 2

Act of March 3, 1927, 41 Stat. 1401.....18

Act of June 18, 1934, 48 Stat. 984..... 8,17

Act of July 24, 1968, 82 Stat. 424..... 2,10

OTHER AUTHORITY:

25 C.F.R. 121..... 8

Cohen, F. Handbook of Federal Indian Law (1940)..... 5,6,14

Defendants Williamson and Bowen's Brief in Opposition to the Petition for Rehearing.....16,21

H.Rep.No. 383, 69th Cong. 1st Sess.....18

Kinney, J., A Continent Lost - A Civilization Won, (1937)..... 6

Otis, D.S., History of the Allotment Policy, at Hearings, Committee on Ind. Aff. 73rd Cong. 2d Session on H.R. 7902 (1934)..... 6

Petition for Rehearing (to the Ninth Circuit).....18

Petition for Writ of Certiorari..... 2,3,5, 11,13,17,19, 23

Reply Brief of Appellants Williamson and Bowen (to the Ninth Circuit).....10

S.Rep.No. 638, 69th Cong. 1st Sess.....18

Supreme Court of the United States Rules, Rule 19..... 3

STATEMENT OF THE CASE

The Northern Cheyenne Tribal Business Council initiated this suit to quiet title of the mineral estate for a portion of the Northern Cheyenne Indian Reservation. The tribal council sued its individual Indian constituents to divest their interest in such minerals.[1] The trial court held in favor of the tribal council,[2] but the U.S. Court of Appeals for the Ninth Circuit reversed, holding the individual Indians have a vested interest in the mineral estate underlying their individually owned property. This appeal followed the Ninth Circuit's decision.

ISSUE PRESENTED

Did the Ninth Circuit err in reaffirming this Court's landmark ruling in Choate v. Trapp, 224 U.S. 665 (1912), that individual Indians' property rights in their individually owned allotments (homesteads) are protected against divestment by the Fifth Amendment due process clause?

STATEMENT OF FACTS

From the late 1880's to 1934 Congress' primary policy toward Indians was to divide communally held tribal property into tracts

[1] The Northern Cheyenne Tribe v. William Hollowbreast, 349 F.Supp. 1302 (D. Mont. 1972).

[2] The Northern Cheyenne Tribe v. Northern Cheyenne Defendant Class of Allottees, Heirs and Devisees, 505 F.2d 268 (9th Cir. 1974).

for individual ownership by the individual tribal members. This transfer of land to individual Indian ownership is known as the allotment system. On June 3, 1926 the President signed a bill implementing this allotment system on the Northern Cheyenne Indian Reservation. Pursuant to this statute the individual tribal members received a parcel of land as their "homestead" or allotment. The allotment act also provided for the mineral estate to be held for communal tribal use for fifty years, then to pass to the allottees of the surface. The allottees' interest (here at issue) arises from this provision of the act which provides:

> "Sec. 3. That the timber, coal, or other minerals, including oil, gas, and other natural deposits, on said reservation are hereby reserved for the benefit of the tribe and may be leased with the consent of the Indian council under such rules and regulations as the Secretary of the Interior may prescribe: Provided, That at the expiration of fifty years from the date of the approval of this Act the coal or other minerals, including oil, gas, and other natural deposits, of said allotments shall become the property of the respective allottees or their heirs. Provided further, That the unallotted lands of said tribe of Indians shall be held in common, subject to the control and management thereof as Congress may deem expedient for the benefit of said Indians." Act of June 3, 1926, 44 Stat. 690. (emphasis added)

This gave the allottees a vested remainder interest in the mineral estate following the tribe's estate per term of fifty years.

During the late 1960's several coal companies began prospecting on the Northern Cheyenne Indian Reservation in search of low sulfur coal. Such coal was found. Of course, negotiating leases with one entity - the tribal business council - would be much easier than negotiating such leases with numerous Indian allottees. Congress passed a bill divesting the allottees of their mineral estate and transferring such minerals to tribal council ownership.[3] By passing

[3] Act of July 24, 1968, 82 Stat. 424. See Petition for Writ of Certiorari p. A 44-45 for the text.

this law, Congress served to facilitate such commercial expedience.[4]

This suit arose as a result of this transfer of the mineral estate to test the constitutionality of such divestment. The trial court held in favor of the tribal business council.[5] The Ninth Circuit reversed, ruling the 1968 amendment violated the Fifth Amendment due process clause as a taking of property without compensation.[6] This appeal followed.

REASONS FOR NOT GRANTING JURISDICTION

SUMMARY

This Court will not grant jurisdiction to hear a review on certiorari unless a U.S. Court of Appeals:

> "...has decided an important question of federal law which has not been, but should be, settled by this Court; or has decided a federal question in a way in conflict with applicable decisions of this court...."[7]

The Ninth Circuit's opinion below does not fall into either category. Rather, the opinion below rests squarely upon this Court's mandate in Choate v. Trapp, 224 U.S. 665 (1912) which has been consistently and correctly adhered to in many subsequent opinions, including at least twenty-seven federal court decisions

---

[4] Petition for Writ of Certiorari at 9.

[5] The Northern Cheyenne Tribe v. Hollowbreast, et al., 349 F.Supp. 1302 (D. Mont. 1972).

[6] The Northern Cheyenne Tribe v. Northern Cheyenne Defendant Class of Allottees, Heirs and Devisees, 505 F.2d 268 (9th Cir. 1974).

[7] Supreme Court of the United States Rules, Rule 19(b).

and nine U.S. Supreme Court decisions![8**] In short, Indian allottees' constitutionally protected property rights in their individually owned allotments have been judicially established, consistently reiterated and entrenched in the decisions of this Court such that no legitimately substantial challenge may now be raised. (See n. 8.) The Ninth Circuit's opinion below simply reaffirmed this established rule of law. Consequently, this Court should not grant jurisdiction to rehash the perfectly sound principles established in Choate v. Trapp.

Further, this decision will not vitally affect the survival of the Northern Cheyennes. This case will not decide whether the coal is mined.[9] Rather, this case only decides whether the rightful

[8**] Among the cases expressly agreeing with Choate's, Constitutional protection of individual Indian's property rights are: Supreme Court - Oklahoma Tax Comm'n. v. United States, 319 U.S. 598, 603 (1943); County of Mahnomen v. United States, 319 U.S. 474, 476 (1943); Mott v. United States, 283 U.S. 747, 752 (1931); Carpenter v. Shaw, 280 U.S. 363, 365, 366 (1929); Sizemore v. Brady, 235 U.S. 441, 449 (1914); Ward v. Love County, 253 U.S. 17, 20, 21 (1919); Williams v. Johnson, 239 U.S. 414, 419 (1915); Gleason v. Wood, 224 U.S. 679 (1912); English v. Richardson, 224 U.S. 680 (1912) - Court of Appeals - United States v. Benewah County, Idaho, 290 F. 268 (9th Cir. 1923); Kirkwood v. Arenas, 243 F.2d 863, 869 (9th Cir. 1957); Morrow v. United States, 243 F. 854, 856 (8th Cir. 1917); Board of County Commissioners v. United States, 152 F.2d 540, 542 (10th Cir. 1945); Board of County Commissioners v. Seben, 130 F.2d 663, 668 (10th Cir. 1941); Landman v. Comm'n Internal Revenue Service, 123 F.2d 787, 790 (10th Cir. 1941); Bryan County, Oklahoma v. United States, 123 F.2d 782, 784 (10th Cir. 1941); Glacier County, Montana v. United States, 99 F.2d 733, 734 (9th Cir. 1938) (does not cite Choate, but states the general proposition as to tax exemptions and vested rights, and cites a previous Ninth Circuit case, United States v. Nez Perce County, 95 F.2d 232 (9th Cir. 1938) in which Choate is cited); United States v. Nez Perce County, 95 F.2d 232 (9th Cir. 1938); Board of Commissioners of Tulsa County, Oklahoma v. United States, 94 F.2d 450, 451 (10th Cir. 1938) - District Court, Court of Claims - Agua Caliente Band of Mission Indians v. County of Riverside, 306 F.Supp., 279, 284 (C.D. Calif. 1969); Choctaw Nation v. United States, 100 F.Supp. 318, 320 (Ct. Cl. 1951); Taunah v. Jones, 90 F.Supp. 459, 463 (W.D. Okla. 1950); United States v. Ferry County, Washington, 39 F.Supp. 1007, 1010, 1011, 1012 (E.D. Wash. 1941); United States v. Spaeth, 24 F.Supp. 465, 467 (D. Minn. 1938); United States v. Ferry County, Washington, 24 F.Supp. 399, 400 (E.D. Wash. 1938); McIntire v. United States, 22 F.Supp. 316, 320 (D. Mont. 1936); United States v. Powers, 16 F.Supp. 155, 162 (D. Mont. 1936).

[9] Approximately 62% of the Northern Cheyenne Indian Reservation is already owned by the Tribal Council and may be leased and mined regardless of the outcome of this case. Only the remaining 37% is here at issue.

Indian owners of the coal will receive the royalties generated from such development. Thus, the energy policy issues presented by Petitioner cannot be resolved in the instant case. Hence, no new question of profound general public importance is presented by this case.

I. The Background Of The Allotment System Clarifies The Nature Of The Rights Involved.

This brief explanation of the Indian land allotment system and the type estates it produced is particularly important to a proper understanding of the rights here at issue. This is because the estates produced by an allotment system peculiar to Indian reservations are far removed from the "mainstream" of non-Indian law practice. Also Petitioner's claims asserting Congress' broad powers to re-allocate Indian property[10] rests upon a failure to properly distinguish between the individual Indians' property and communally held tribal property. This distinction is the key to resolving this case.

Prior to their settlement on reservations, the Indians of the North Plains knew no exclusive property rights to real property. Rather, they viewed land as being for the communal, non-exclusive use and occupancy of its inhabitants. When these people were settled on reservations, they continued to recognize the non-exclusive use and occupancy of land as a proper mode of tenure.

During the late 1800's, it became apparent that most Indian reservations were being surrounded by the non-Indian culture. Faced with the problems attending such inter-cultural clash, Congress deemed it advisable to homogenize these cultural differences by converting the Indian to the ways of the white man.[11] Noting individual land ownership was essential to this cultural transition, Congress implemented a system dividing tribal lands into parcels for ownership by individual Indians.[12] This was the allotment system.[13]

[10] Petition for Writ of Certiorari, at 18-23.

[11] F.Cohen Handbook of Federal Indian Law, 206-210 (1940).

The allotment system set forth a scheme for the transition of Indian lands from tribal ownership to ownership by individual Indians.[14] This transition had several phases. In each successive phase, the allottee acquired more complete title until finally he could take a fee patent.

So long as the land was tribal land, the individual Indian had no vested right in such land.[15] However, once the individual Indian chose and filed his application for the allotment, the land

[12] Act of Feb. 8, 1887, 24 Stat. 388 and various implementing acts. Commenting on Congress' Legislative motives, Mr. Cohen wrote: "The supreme aim of the friends of Indian was to substitute white civilization for his tribal culture, and they shrewdly sensed that the difference in concepts of property was fundamental in the contrast between the two ways of life....So on the one hand, allotment was counted on to break up tribal life." Cohen, Handbook of Federal Indian Law, 208 (1940).

The U.S. Supreme Court described the transition of title under the allotment system as follows: "For a long period Congress pursued the policy of imposing as rapidly as possible, our system of individual land tenure on the Indian. To this end tribal or communal land holdings of the Indians were superceded by allotment to individuals, who were protected against improvidence by restrictions on alienation." Arenas v. United States, 322 U.S. 419, 420-21 (1944). (emphasis added).

[13] For further accounts on the development of the allotment system see: J. Kinney, A Continent Lost - A Civilization Won (1937); D.S. Otis, History of the Allotment Policy (1934) found at the Hearings, Committee on Ind. Aff. 73rd Cong., 2d Session on H.R. 7902 (1934).

[14] These allotment acts typically provided for the reservation to be surveyed into tracts, enrolled members of the tribe could select a parcel as their allotment, upon approval of such allotment by the Secretary of the Interior a trust patent issued on said allotment, and that upon the expiration of the 25 year restraint on alienation, the Indian could receive a fee patent on the land.

[15] United States v. Jim, 409 U.S. 80 reh.den. 409 U.S. 1118 (1972); Gritts v. Fisher, 224 U.S. 640 (1912);
Also see F. Cohen Handbook on Federal Indian Law, 183-85 (1940).

was removed from tribal ownership.[16] The allottee's rights in the land vested either when his completed application was filed or when the Secretary of the Interior approved the application.[17] Once the application was approved, the trust patent issued. Under the trust patent the United States held legal title as guardian of the allottee while the allottee held equitable title to the land.[18] The allottee's equitable title is regarded as fee title[19] subject to a restraint on alienation[20] enforced by the government.[21] The allottee's title was also predominate over any interest the tribe may claim in such land,[22**] and if the minerals pass with the allotment they are the allottee's property protected by the Constitution.[23]

---

[16] Raymond Bear Hill, 52 I.D. 688 (1929).

---

[17] The applicable date depends on whether the allotment act specific to that reservation gives the Secretary of the Interior descretion in issuing the allotment. See Arenas v. United States, 322 U.S. 419 (1944) particularly United States v. Arenas, 138 F.2d 730 (9th Cir. 1946) cert. denied, 331 U.S. 842 (1947); Raymond Bear Hill, 52 I.D. 688 (1929); Rights of Indians to Allotments In San Juan County, Utah, 57 I.D. 547 (1947). The case acknowledging the Secretary's descretion was St. Marie v. United States, 108 F.2d 876 (9th Cir. 1940), cert. denied, 311 U.S. 652 (1940) however this case is rather weak due to the later Arenas, cases.

---

[18] Act of Feb. 8, 1887, 24 Stat. 388(5); Payne v. New Mexico, 255 U.S. 367 (1921); Rights of Indians to Allotments in San Juan County, Utah, 57 I.D. 547 (1942).

---

[19] Arenas v. United States, 322 U.S. 419, 421 (1944). Mott v. United States, 283 U.S. 747, 749 (1931). Fish v. Wise, 52 F.2d 544 (10th Cir. 1931) cert. denied 282 U.S. 903 (1931).

---

[20] Act of Feb. 8, 1887, 24 Stat. 388.

---

[21] Heckman v. United States, 224 U.S. 413 (1912).

[22**] In Fish v. Wise, 52 F.2d 544 (10th Cir. 1931) cert. denied, 282 U.S. 903 (1931) the Tenth Circuit specifically rejected a tribe's attempt to reallocate the mineral estate of Indian allottees.

---

[23] Mott v. United States, 283 U.S. 747 (1931).

However, the allottee could not alienate the land so long as the federal government held the land in trust. Once the period for holding the land in trust had expired, a patent in fee, free of all encumbrance, could be issued to the allottee or his heirs.[24]

Not all reservation land was allotted. Some was sold to non-Indian homesteaders and some remainded under tribal ownership. In 1934 the allotment of land ceased.[25]

There are presently several types of ownership of reservation land: land which had been allotted and is in individual Indian ownership; land owned by non-Indian individuals and; land which is not allotted and remains in tribal ownership.

Thus, commonly held tribal land is a very different estate than the individually owned Indian allotments (here at issue).

As a result, Congress may not indiscriminately exercise control over reservation lands. Rather, the extent to which Congress may exercise control over such land depends on the type ownership of the land. Congress may re-allocate benefits of tribal land as it pleases[26] but may only manage individual property (here at issue) subject to the constitutionally protected property rights of the individual owners.[27]

II. Choate v. Trapp Properly Controls The Result of The Instant Case.

The Ninth Circuit relied on Choate v. Trapp, 224 U.S. 665 (1912)

---

[24] Act of Feb. 8, 1887, 24 Stat. 388(5); 25 C.F.R. 121.

---

[25] Act of June 18, 1934, 48 Stat. 984.

---

[26] The reason for this being that no individual's rights have vested to interfere with such reallocation. See United States v. Jim, 409 U.S. 80, reh. den. 409 U.S. 1118 (1972); Gritts v. Fisher, 224 U.S. 640 (1912).

---

[27] Choate v. Trapp, 244 U.S. 665 (1912).
English v. Richardson, 224 U.S. 680 (1912).
Also see cases cited in footnote 8**.

in recognizing the Indian allottees' constitutionally protected property rights. However, the Petitioner tries to cast doubt on this reliance by confusing rights incident to tribally owned property (communally owned) with rights incident to individually owned property. The distinction between tribal and individually owned property was set forth in two landmark cases, Choate v. Trapp, 224 U.S. 665 (1912) and Gritts v. Fisher, 224 U.S. 640 (1912).[28**] Analysis of these two cases proves the Ninth Circuit's decision below correct.

II.A. Individual Indians Have Constitutional Rights In Individually Owned Trust Allotments According To Choate v. Trapp.

Choate, controls the result of the instant case because both Choate and the instant case involve the individual Indians' rights in their individually owned property.

In Choate the Choctaw and Chickasaw Indians took allotments under authority of a statute which provided such land was tax exempt. A later federal statute repealed this tax exemption. However, this Court held the later statute, allowing taxation, divested rights of the allottees in their individual property, violated the Fifth Amendment due process clause.[29]

The Choate decision is important for several reasons.

First, Choate recognized Indians' rights in their individually owned property.[30] Such property rights are constitutionally pro-

[28**] It is particularly useful to read these two cases together. While they were not companion cases as such, they were both presented to this Court during the same term and both opinions were delivered on the same day. Thus, both cases, were on the Justices' minds when they were formulating both decisions and both the Gritts case and the Choate case appear to be drafted to acknowledge and compliment the other.

[29] U.S. Const. Amend. V.

[30] Choate v. Trapp, 224 U.S. at 677 stated: "There have been comparatively few cases which discuss the legislative power over private property held by Indians. But those few all recognize that he is not excepted from the protection guaranteed by the Constitution. His private rights are secured and enforced to the same extent in the same way as other residents or citizens of the United States." (emphasis added)

tected from divestment or diminishment (including "reallocation") by the due process clause. It is most important to note that the rights in Choate were the rights of individual Indian allottees in their land held under TRUST ALLOTMENTS.[32] This is the same interest and the SAME TYPE ESTATE presented by the Respondent/Allottees in the case at bar. Consequently, Choate compells a recognition of the Northern Cheyenne allottees' vested rights in their allotment land. Recognition of the allottees' property rights, in turn, compells affirmance of the Ninth Circuit's decision below.

The second important point in Choate v. Trapp is that due process protects against action by the federal government. This is important because only the federal government has the board plenary powers resulting from its guardianship relation to the Indians.[33]

Consequently, striking down a federal Indian statute brings Choate further in point,[34] and specifically limits Congress' other-

[31] Again, Choate v. Trapp, 224 U.S. at 674 emphasized: "Under the provisions of the Fifth Amendment there was no more power to deprive him of the exemption than other right in the property. No statute would have been valid which reduced his fee to a life estate or attempted to take from him ten acres, or fifty acres, or the timber growing on the land....It is conceded that no right which was actually confered upon the Indian can be arbitrarily abrogated by statute." (emphasis added)

The fact that diminishment, hence "reallocation" of individual property is prohibited is particularly important in light of the trial court's attaching considerable importance to this just being a "reallocation" somehow removing the divestment problem. See Northern Cheyenne Tribe v. Hollowbreast, 349 F.Supp. 1302, 1311 (D. Mont. 1972).

[32] Only under trust allotments are restraints on alienation imposed (See n. 18, 19, 20, & 24.) The later statute allowing taxation also attempted to remove this restraint. Since the rights must have vested prior to passage of this later statute, (See Reply Brief of Appellants Williamson and Bowen to the Ninth Circuit pages 17-19) such rights must have bested in trust allotments.

[33] Worcester v. Georgia, 6 Pet. 515 (1832) held the federal government is guardian of the Indians, such guardianship being immune from interference by the states. See also Williams v. Lee, 358 U.S. 217 (1959), and McClanahan v. State Tax Commission of Arizona, 411 U.S. 164 (1973).

[34] Since the case at bar also involves a federal statute, Act of July 29, 1968, 82 Stat. 424, the holding in Choate is, in principle, directly in point so as to be controlling in this case.

wise broad guardianship powers. Petitioner emphasizes Congress' guardianship powers.[35] However, Congress' guardianship powers were also before this Court in Choate and this Court specifically rejected this argument when weighed against the constitutional rights of Indian individuals.

> ".... it was said that incompetent persons, though citizens, may not have the full right to control their property and there was nothing in citizenship incompatible with guardianship,....But there was no indication that the power of wardship conferred authority on Congress to lessen any of the rights of property which have been vested in the individual Indian by prior laws or contracts. Such rights are protected from repeal by the provisions of the Fifth Amendment." Choate v. Trapp, 224 U.S. at 578 (emphasis added).

Thus, the Choate decision and the Ninth Circuit's decision below parallel each other in many respects: both involve individual Indians' property rights; both involve property rights in trust allotments; both affirm the existence and protection of such rights; both reject attempts to divest such rights by a later federal statute; and both limit the federal government's powers as guardian of the Indians' private property. In the face of these parallels Choate clearly controls the disposition of the instant case. Consequently, the Ninth Circuit's decision below is correct.

II.B. Individual Indians Have No Right Or Enforceable Title In TRIBAL Property According To Gritts v. Fisher.

Gritts v. Fisher,[36] compliments Choate in defining the extent of individual Indians' property rights in estates peculiar to Indian reservations.[37]

In Gritts enrollment on the tribal rolls closed on a given date.

---

[35] Petition for Writ of Certiorari, at 18-23.

[36] 224 U.S. 640 (1912).

[37] See n. 28.

Only those enrolled prior to that date were legally members of the tribe. The tribal land was to be allotted among the enrolled members. The left over tribal land was to be sold to homesteaders with the proceeds to be distributed among the enrolled members. A later statute re-opened the tribal rolls to permit additional enrollment. The original enrollees sued to prevent diminishment of their share of funds from liquidation of the TRIBAL PROPERTY. Hence, the issue in Gritts was: Did the original enrollees have a vested right in the proceeds from TRIBAL property? This Court answered, "NO". While an individual Indian holds no vested right in tribal property, the Gritts decision carefully pointed out it deals ONLY WITH TRIBAL PROPERTY, not with individual allotments.[38] In fact the Gritts decision expressly disclaimed any right to reallocate individual property,[39] in recognition of the Choate decision. Similarly, the Choate decision expressly recognized the Gritts holding[40] denying individual rights in tribal property.

In conclusion, Choate recognized vested rights in individually owned allotments while Gritts denied such rights in tribal property. Since Choate and Gritts dealt with different types of estates, they do not contradict each other. Accordingly, Petitioner's claim that Gritts and its re-affirmations[41] undermine Choate is in error.

---

[38] "It is not proposed to disturb the individual allotments...." Gritts v. Fisher, 224 U.S. at 647. And again: "As has been indicated their individual allotments are not affected." Id. at 648.

[39] "....It is conceded, and properly so, that the latter legislation is valid and controlling unless it impairs or destroys rights which the act of 1902 vested in members living September 1, 1902, and enrolled under that act. As has been indicated, their individual allotments are not affected." Gritts v. Fisher, 244 U.S. 640, 648 (1912) (emphasis added). Thus, the court was careful to point out that no vested rights were involved because it only affected the sale of tribal property and the proceeds from that sale which was also tribal property.

[40] Choate v. Trapp, states: "The individual Indian has no title or enforceable right in tribal property." 224 U.S. at 671.

[41] See n. 66, 67, 68 69, 70 & 71.

II.C. The Decision In Choate v. Trapp Is Based On Statutory, Not Contractual, Rights.

Petitioner claims Choate v. Trapp, deals only with contract rights.[42] While the dicta of a few decisions appear to misread Choate in this respect, this "contract right" interpretation of Choate is rejected by:

The legal basis of Choate;

The specific language of the Choate decision;

Substantial case law following the Choate decision;

and, Interpretation by the leading scholar in the field.

Additionally, according to substantial authority, any contract or treaty rights at stake in Choate could have been altered by subsequent federal statute (a result opposite that of Choate). Hence, contract rights could not supply the basis of the Choate decision.

If the Indians' rights in Choate rested upon contract rights, the Choate decision would have rested on the "impairment of contract" clause.[43] However, the Choate decision contains no mention of the "impairment of contract" clause. Rather, the Choate decision hinges on Fifth Amendment due process rights. Thus, the legal basis of the Choate decision requires the rights there involved be statutory property rights, not contract rights.

The language of the Choate decision specifically disclaims any reliance on any contract or treaty rights. The Court stated:

> "The question in this case, therefore, is not whether the plaintiffs were parties to the Atoka agreement, but whether they had not acquired rights under the Curtis Act which are now protected by the Constitution of the United States." 224 U.S. at 671.

This quote spells out that contract rights (the Atoka agreement being the supposed contract) were not at issue. Rather, statutory

---

[42] Petition for Writ of Certiorari, at 15-18.

[43] U.S. Const. Art. 1, Sec. 10.

based property rights (the Curtis Act being the allotment act) were at issue. Also other language in the Choate decision re-affirms the allotment act as the source of the allottee's rights.[44]

On several occasions in his noted treatise, The Handbook of Federal Indian Law, Felix Cohen specifically interprets Choate as protecting private property rights[45] stemming from a statute.[46] Mr. Cohen is undoubtedly the foremost expert in this field to date. Accordingly, his interpretation should be most persuasive, and is indeed correct.

Futhermore, English v. Richardson,[47] Ward v. Love County[48] and

---

[44] For instance: "Those who signed the patent could not convey more rights than they were granted by that part of the Curtis Act.. ..." 224 U.S. at 673 (emphasis added). And; "The patent issued in pursuance of those statutes gave the Indian as good a title to the exemption as it did to the land itself." 224 U.S. at 673-74. (emphasis added).

[45] Mr. Cohen states; "As in the case of private property generally, Congress cannot deprive an Indian of his land or any interest therein without due process of law or take such property for public purposes without just compensation. An outstanding decision on the subject is Choate v. Trapp...." F. Cohen, Handbook of Federal Indian Law, 97-98 (1940). (emphasis added)

Also, "Under the United States Constitution, the rights of the Indian in his private property, whatever they may be, are secured and enforced to the same extent and in the same way as other residents or citizens of the United States." Id. at 195 (emphasis added) citing Choate v. Trapp.

[46] "The principle of construction in favor of Indians is also applied to Congressional statutes", F. Cohen, Handbook of Federal Indian Law, 172 (1940), citing Choate v. Trapp, as authority for this proposition.

Also, "The leading case of Choate v. Trapp, held that under this statute allottees acquired a vested property right to exemption from state taxation....and could not be impaired by subsequent Congressional action without violation of the Fifth Amendment of the Federal Constitution." Id. at 437. (emphasis added)

[47] 224 U.S. 680 (1912).

[48] 253 U.S. 17 (1919).

Carpenter v. Shaw,[49] were all decided by this Court, all involved the very same statutory tax exemption as Choate and all expressly interpreted Choate as recognizing statutory based property rights.[50] Petitioner's reliance on the dicta of Brader v. James,[51] and its re-affirmations,[52] does not undermine Choate, because these decisions dealt with the Indians' personal status as a ward, not with property rights.[53] This distinction was expressly noted in Choate, and was

---

[49] 280 U.S. 363 (1929).

[50] In English v. Richardson, this Court stated: "The right to the plaintiff to the exemption granted by Congress is protected by the Constitution on principles stated and applied in Choate v. Trapp." 224 U.S. at 681. (emphasis added)

The fact that the U.S. Supreme Court acknowledged these rights as "granted by Congress" indicates these rights were statutory rights.

Again in Ward v. Love County, this Court stated: "This was settled in Choate v. Trapp.....and was also settled in those cases that the exemption was a vested property right arising out of a law of Congress and protected by the Constitution of the United States.. ...through the pending suits and otherwise they were objecting and protesting taxation of their lands which had been forbidden by a law of Congress." 253 U.S. at 20, 23. (emphasis added).

And still again in Carpenter v. Shaw, this Court referred to Choate stating: "It was there held that the provision for the exemption conferred upon the allottees' property rights which were within the protection of the Fifth Amendment and hence it was not subject to repeal by later Congressional legislation;...." 280 U.S. at 365-66 (1929). (emphasis added)

[51] 245 U.S. 88 (1918).

[52] Actually Brader basically reaffirmed Tiger v. Western Investment Co., 221 U.S. 286 (1911) and United States v. Jackson, 280 U.S. 183 (1930) reaffirmed Brader and Tiger. Understandably Petitioner is reluctant to cite the lead case, Tiger, since Choate expressly reconciled Tiger's holding (and in turn Brader and Jackson's).

See the next footnote for the text of this "reconciliation".

[53] The Choate decision stated: "Nothing that was said in Tiger v. Western Investment Co.,....is opposed to the same conclusion here. For that case did not involve property rights, but related solely to the power of Congress to extend the period of the Indians' disability. The statute did not attempt to take his land or any right, member, or appurtenance thereto belonging. It left that as it was." 224 U.S. at 678 (1912). (emphasis added) This decision was also quick to note that wardship provided no basis for impairing vested property rights. (See this brief at 11 and n. 77.)

dealt with at length in the briefs below.[54]

In short, on numerous occasions, this Court has adopted a broad interpretation of Choate specifically contradicting Petitioner's "contract rights" misinterpretation.

In addition, numerous cases have held that tribal contracts or treaty rights may be changed by subsequent federal statute.[55] In fact, the Choate decision expressly agrees with this proposition.[56] Therefore, if the allottees in Choate premised their case on contract rights under the Atoka agreement, they would have lost. By using Petitioner's "contract" theory of Choate, it would have been decided directly contrary to its actual results. Clearly, Petitioner's MISunderstanding of Choate could not be more complete.

III. The Allottees' Remainder Interest In The Mineral Estate Was Conveyed By The Original Trust Patents.

The Northern Cheyenne allotment act of 1926[57] fully conveyed the mineral estate with the allottees' remainder interest vesting upon

---

[54] See Defendants Williamson and Bowen's Brief in Opposition to the Petition for Rehearing submitted to the Ninth Circuit below. pp. 11-13.

[55] Lone Wolf v. Hitchcock, 187 U.S. 553 (1903); Thomas v. Gay, 169 U.S. 214 (1898); United States v. White, 508 F.2d 453 (8th Cir. 1974); Nicodemus v. Washington Water and Power Co., 264 F.2d 614, 617 (9th Cir. 1959); National Indian Youth Council v. Bruce, 366 F.Supp. 313, 316 (N.D. Utah 1973); United States v. 2,005.32 Acres of Land etc., 160 F.Supp. 193, 196 (N.D. So.Dak. 1958).

[56] "There are many cases....recognizing the plenary powers of Congress over Indian Tribes and tribal property cannot be limited by treaties so as to prevent repeal or amendment by later 'statute'. The tribes have been regarded as dependent nations, and treaties with them have been looked upon not as contracts but as public laws which could be abrogated at the will of the United States. For although the Atoka agreement is in the form of a contract, it is still an integral part of the Curtis act, and, if not a treaty, is a public law relating to tribal property, and as such is amendable and repealable at the will of Congress." 224 U.S. at 671. (emphasis added).

[57] Act of June 3, 1926, 44 Stat. 690.

completion of their allotment applications. This is indicated by the mandatory language of the statute, its legislative history and the omission of language delaying the conveyance common to other allotment acts.

The allotment act states unequivocally, the minerals "shall become the property of the respective allottees". While "shall become" delays the possession of the minerals, "shall" is mandatory language requiring a present vesting when the allottees' rights attach. The allottees' rights to equitable title vest upon completion of their allotment applications[58] and the minerals pass with the equitable title.[59] The allottees' applications must have been completed and filed prior to June 18, 1934.[60] Consequently, the allottee's remainder interest in the minerals were perfected by 1934.[61]

The legislative history of the Northern Cheyenne allotment act confirms a deliberate Congressional intent to convey the minerals to the allottees. An amendment to this act which would have allotted

---

58 See n. 16, 17, 18; also Arenas v. United States, 322 U.S. 419 (1944); Wyoming v. United States, 255 U.S. 489 (1921); Payne v. New Mexico, 255 U.S. 367 (1921); Right of Indians to Allotments in San Juan County Utah, 57 I.D. 547 (1942); Allotment Selections on the Fort Belknap Indian Reservation, 55 I.D. 295 (1935); Raymond Bear Hill, 52 I.D. 688 (1929); Benson Min. & Smelting Co. v. Alta Min. & Smelting Co., 145 U.S. 428 (1892).

59 Mott v. United States, 283 U.S. 747 (1931); Wyoming v. United States, 255 U.S. 489 (1921); Particularly see Raymond Bear Hill, 52 I.D. 688 (1929) which held an amendment to an allotment act reserving the minerals to the tribe did not affect allotments applied for prior to passage of the amendment.

60 The Wheeler-Howard Act, Act of June 18, 1934, 48 Stat. 984 terminated allotment of tribal land. Only allotment applications perfected as of that date were issued. See Allotment Selections On The Fort Belknap Indian Reservation, 55 I.D. 295 (1935).

61 Hence Petitioner's attempt to distinguish Choate v. Trapp, on the basis that it only protects completed allotments (Petition for Writ of Certiorari p. 17) must fail because all the allotments were completed by 1934!

only the "surface rights" was proposed, considered and rejected.[62] In response to this amendment Congress gave the remainder mineral interest to the allottees.[63] This indicates a deliberate, calculated Congressional desire to give the minerals to the allottees.

By contrast, on other reservations Congress either gave the minerals to the tribe in perpetuity[64] or reserved its option to extend tribal ownership by including an "unless otherwise provided by Congress"[65] proviso in the grant of minerals. This "unless otherwise provided by Congress" language became a commonly used method of keeping Congress' options open, and was used in numerous allotment acts drafted prior to the Northern Cheyenne's allotment act. The conspicuous absence of this commonly used statutory language indicates Congress recognized allottees' immediately vesting interest in the minerals.

---

62 See Petition for Rehearing, pp. 13-15. H.Rep.No. 383, 69th Cong. 1st Sess. S.Rep.No. 638, 69th Cong., 1st Sess.

63 Petition for Rehearing, p. 14. S.Rep.No. 638, 69th Cong., 1st Sess.

64 Act of March 3, 1927, 44 Stat. 1401, 41 Stat. 408 dealing with the Fort Peck Indian Reservation (this is actually an amendment to the allotment act but it did not affect allotments perfected prior to the amendments' passage. See Raymond Bear Hill, 52 I.D. 688 (1929).)

65 Among the allotment acts using the "unless otherwise provided by Congress" language are the Act of June 28, 1906, 34 Stat. 539 dealing with the Osage Indian Reservation (see Adams v. Osage Tribe, 59 F.2d 653, (10th Cir. 1932) for an interpretation of this proviso); the Act of May 29, 1908, 35 Stat. 460 concerning the Standing Rock and Cheyenne River Reservations; the Act of June 30, 1919, 41 Stat. 17 concerning the Blackfeet Indian Reservation; the Act of June 4, 1920, 41 Stat. 751 concerning the Crow Indian Reservation; and the Act of March 3, 1921, 41 Stat. 1355 concerning the Fort Belknap Indian Reservation. Note, all these statutes were drafted prior to the Northern Cheyennes' allotment act here at issue.

IV. Congress' Authority In Conducting Indians Affairs Does Not Otherwise Permit Divesting Vested Allotment Rights.

This section is a reply to the Petition for Writ of Certiorari, pages 18-22. On this point, Petitioner claims Congress retains power to reallocate tribal property, even though such power is not expressly reserved. Here Petitioner paints the issues involved with a very broad brush so as to misconstrue the authorities cited, and blur the distinction between individual and tribal property.

All the authorities Petitioner cites fall into several categories which clearly do not apply to the rights at stake in the instant case. Petitioner's authorities on this point may be catagorized as follows:

1. The following cases deal only with tribal land, not individually owned property:

United States v. Jim, 409 U.S. 80 (1972) [66]
Chase Jr., v. United States, 256 U.S. 1 (1921) [67]
United States v. Rowell, 243 U.S. 464 (1917) [68]
Sizemore v. Brady, 235 U.S. 441 (1914) [69]
Nadeau v. Union Pacific Railroad, 253 U.S. 442 (1920) [70]

---

66 The Jim case involved distribution of royalties from tribal lands, thus it correctly applied the Gritts rule for the reallocation of tribal property.

---

67 In Chase, Jr., a statute terminated allotment before Mr. Chase had selected his allotment. This court held that no individual rights had vested (since an application for an allotment was not timely filed) so the land remained tribal and could be re-allocated.

---

68 In the Rowell case an allotment application of a non-Indian was revoked prior to issuance of the patent. This court held that prior to issuing the patent, the land remained tribal and the individual's rights had not vested yet.

---

69 The Sizemore case involved inheritance rights in an allotment when the allottee died prior to actually receiving the allotment. This court held that the land was still tribal so Congress could amend the inheritance distribution after the allottees' death.

---

70 The Nadeau case involved only UNallotted land given to the railroad.

United States v. Chase, 245 U.S. 89 (1917) [71]

Since these cases deal only with tribal land, they fall under the Gritts rule, [72] rather than the Choate rule. Consequently, they are not applicable to the instant case.

2. Most other cases cited deal with the personal status of the parties, not their property rights per se. (i.e., personal rights and privileges such as citizenship and treaty rights peculiar to Indian persons, or limitations on personal rights such as wardship).

This category may be divided as follows:

(A) Personal characteristics (or status) which serves as a condition prior to allotment eligibility. The following cases fit this category:

Lowe v. Fisher, 223 U.S. 95 (1912) [73]
Wallace v. Adams, 204 U.S. 415 (1907) [74]
Stephens v. Cherokee Nation, 174 U.S. 445 (1899) [75]

---

71 The Chase case involved a dispute over a tract of land between one who claimed under a right of occupancy through a treaty, and one who claimed the land through a later allotment statute. The rights under the allotment act prevailed. Prior to the allotment, the land retained its tribal character and no rights could vest therein.

---

72 See section IIB of this Brief.

---

73 In Lowe this Court held the Secretary of the Interior could check the tribal enrollment list and exclude persons erroneously enrolled. Tribal enrollment was a pre-requisite to allotment eligibility. Consequently, the allotment could also be revoked, because the allotment's pre-requisites had not been met so the rights never actually vested.

---

74 Both Wallace v. Adams and Stephens v. Cherokee Nation involve the same basic issue as Lowe but the tribal enrollment is cast in terms of citizenship. All these cases reach the same result. (See n. 73.)

---

75 See n. 73 and 74.

Since the issues in these cases involve pre-requisites for allotment eligibility, they address the allotment process prior to any vesting of individual rights. Consequently, any principles set forth in these cases have no bearing on the instant case.

(B) Other conditions dealing with the Indian's personal status[76] as a ward of the government:[77]

United States v. Jackson, 280 U.S. 183 (1930)
Brader v. James, 246 U.S. 88 (1918) 78

---

[76] See n.52, 53 and 77 and Defendants Williamson and Bowen's Brief in Opposition to the Petition for Rehearing, pp. 11-13.

---

[77] Most of the cases in this category involve the question of whether Congress can extend the period of the restraint on alienation of trust allotments. These cases are Tiger v. Western Investment Co., Goat v. United States, Heckman v. United States, Brader v. James, and United States v. Jackson. Tiger is the lead case. This Court held that the restraint on alienation was an attribute of the Indian's wardship. Thus, it related to his personal status, not a property right. Moreover this Court in Choate v. Trapp, expressly noted this distinction and reconciled the results of Choate and Tiger.

The Choate decision stated: "Nothing that was said in Tiger v. Western Investment Co.,....is opposed to the same conclusion here. For that case did not involve property rights, but related solely to the power of Congress to extend the period of the Indian's disability. The statute did not attempt to take his land or any right, member, or appurtenance thereto belonging. It left that as it was." Choate v. Trapp, 224 U.S. 665, 678 (1912) (emphasis added).

The Court was quick to add that wardship provided no basis for abrogating property rights.

"But there was no intimation that the power of wardship conferred authority on Congress to lessen any of the rights of property which had been vested in the individual Indian by prior laws or contracts. Such rights are protected from repeal by the Fifth Amendment." Id. at 678.

Choate also distinguished the restraint on alienation due to wardship included in Tiger from the tax exemption property right as follows: "But the exemption and non-alienability were two separate and distinct subjects. One conferred a right and the other imposed a limitation.....The right to remove the restriction was in pursuance of the power under which Congress could legislate as to the status of the ward and lengthen or shorten the period of disability. But the provision that the land should be non-taxable was a property right, which Congress undoubtedly had the power to grant. That right fully vested in the Indians and was binding upon Oklahoma. Id. at 673. (emphasis added).

Goat, Heckman, Brader and Jackson just re-affirmed Tiger.

---

[78] See n. 77.

Williams v. Johnson, 239 U.S. 414 (1915) 80
United States v. Bartlett, 235 U.S. 72 (1914)
Heckman v. United States, 224 U.S. 413 (1912) 81
Goat v. United States, 224 U.S. 458 (1912) 82
Tiger v. Western Investment Co., 221 U.S. 286 (1911) 83

Since these cases deal with the Indian's personal status as a ward, NOT with property rights, they are not applicable to the instant case.

3. Petitioner's only remaining authority is Sweet v. Schock, 245 U.S. 192 (1917). The issue in this case was whether an allotment's tax exemption runs with the land or requires continuing Indian ownership. This case held that when an allotment is sold to a non-Indian[84], the tax exemption ceases. This case did not divest any Indian's rights to a tax exemption as Petitioner would have us believe.

Indeed this Court has held directly contrary to Petitioner's claim that guardianship serves as no justification to confiscate

---

[79] In Williams v. Johnson the question was the converse of the Tiger case. The issue was whether Congress could end the restraint on alienation prior to the original statutory period. This Court held such early termination was legal, again using the Tiger rationale that the restraint on alienation was a personal attribute of wardship, not a property right.

---

[80] The Bartlett case simply held the extending restraints on alienation did not apply to land existing under a fee patent (freed from the restraint on alienation) prior to the passage of the act.

---

[81] See n. 77.

---

[82] See n. 77.

---

[83] See n. 77.

---

[84] The statute dissolving the tax exemption upon alienation of the land was passed prior to the land sale at issue. Consequently, the purchaser took subject the statute's terms.

Indians' property.

The above listed cases distinguish EVERY case cited by Petitioner in the Petition for Writ of Certiorari, at 18-23.

In conclusion, Petitioner's authority is, at best, out of point. As such it supports neither the issues as stated by Petitioner nor the issues of this case. As such Petitioner's claim should be rejected.

CONCLUSION

In Conclusion, the Ninth Circuit correctly interpreted Choate v. Trapp in the decision below. Accordingly, the recognition and enforcement of the allottees' vested remainder in the minerals was proper. Also, upon examination, Petitioner's authority does not actually undermine Choate or its application to the instant case.

As a result, this Court should deny jurisdiction and allow the Ninth Circuit's opinion below to stand.

Respectfully submitted,

MONTANA LEGAL SERVICES ASSOCIATION
601 Power Block
Helena, Montana 59601
Attorneys for Respondents Williamson and Bowen

By: NEIL HAIGHT

---

85 Lane v. Santa Rósa, 249 U.S. 110 (1919) at 113 stated "That would not be an exercise of guardianship but an act of confiscation" and prohibited the federal goverment's abrogating Indian property rights. Also see Choate v. Trapp, and n. 8.

CERTIFICATE OF MAILING

This will certify that a true and correct copy of the aforegoing Brief In Opposition To The Petition For Writ Of Certiorari was mailed on the 20th day of August, 1975, to:

Ziontz, Pirtle, Morisset,
Eranstoff and Chestnut
208 Pioneer Building
600 First Avenue
Seattle, WA 98104

Lewis E. Brueggemann
Attorney at Law
Hart Albin Bldg.
Billings, MT 59101

Otis Packwood
U.S. Attorney
316 N. 26th
Billings, MT 59101

Montana Legal Services Assn.
601 Power Block
Helena, MT 59601

BY Sandy Cornell